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ABSTRACT

A review of court opinions on school discipline suggests that the use of academic penalties as a sanction for student misconduct is widespread and increasing. In 12 cases during the past decade examined in this chapter, students won 5 and lost 7. In challenges of school board policies that assess academic penalties for truancy, students won in three and lost in four cases. In challenges of policies that include grade reduction with suspensions, students won in two and lost in three cases. Despite the lack of congruency between court opinions, some observations can be made. Courts are loath to intrude in matters that are purely academic; when academic sanctions are used as a disciplinary response, they are subject to legal challenges as violative of substantive or procedural due process. Most courts require a rational connection (nexus) between the academic sanction and the conduct of the student. In addition, school rules that impose academic sanctions for student misconduct are most likely to be upheld if they incorporate the following guidelines: (1) explicit policies should be made known to the students; (2) the policy should permit students to take final examinations; (3) academic penalties should be limited to those serious offenses that also result in suspension from school; and (4) school policies shoud meet minimum standards of due process. (MLF)

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Academic Penalties for Student Misconduct

Clifford P. Hooker

Educators and the general public agree that there can be no excellence in education without discipline in the schools. Yet many teachers and administrators are running low on disciplinary tactics that are both legally acceptable and educationally sound. Corporal punishment may pass judicial muster, but it is a drastic measure disreputed by most parents and educators who question its educational validity. Suspensions for more than one day must meet time-consuming due process standards, and the possibility of costly litigation increases if the school attempts lengthy suspensions or permanent expulsions. After-school detention is also unworkable, because most students are transported to and from school, and the cost of additional transportation for detainees can be prohibitive.

A review of court opinions on school discipline suggests that the use of academic penalties as a sanction for student misconduct is widespread and increasing. Most grading systems subtly reward students for good behavior and effort. Particularly among poorer students, it is a common practice to give higher grades to those who attend classes and make an effort than to the habitual truant. This practice has never resulted in a lawsuit against a teacher or school. However, when earned grades are reduced or credits are withheld, as a form of punishment, legal challenges sometimes ensue.

The battle between recalcitrant students and school officials who use academic penalties to enforce school rules is not new. The events leading to one of the oldest cases of record began on the evening of May 30, 1918, at the high school graduation in Casey, Iowa. Three members of the graduating class, including the valedictorian, refused to wear the furnished caps and gowns, which smelled offensive because of their recent fumigation using formaldehyde. Standing at the entrance to the dressing room where the class members were preparing for commencement exercises, the superintendent issued the edict: "Thou shall not pass without wearing the gowns." A total of three young women, all of whom had completed the prescribed course of study with satisfactory grades, thus were not in their seats on the

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platform for graduation. The school board refused to grant diplomas to the students who had not participated in commencement ceremonies.

The Supreme Court of Iowa ordered the school board to grant the diplomas.[1] Holding that the school board rule relative to the wearing of caps and gowns was unreasonable, the court said: "The wearing of a cap and gown on commencement night has no relation to educational values. . . . The enforcement of such a rule is purely arbitrary and especially so when the offending pupil has been passed for graduation after the performance on her part of all prescribed educational requirements."[2]

Many school boards are today faced with a contemporary version of essentially the same issue that the Iowa board faced over sixty years ago. May school boards adopt policies prescribing grade reductions for violations of school rules? At least a dozen courts have struggled with this question in the past decade.

Cases in Which the School Board Prevailed

The school board has prevailed in seven of the twelve reported cases of the past ten years. In four cases, the board has successfully defended its policies that assess academic penalties for truancy.

Grade Reduction for Truancy

Knight v. Board of Education[3] is the leading truancy case. Knight, while a senior at an Illinois high school, skipped school for two days during the spring semester. As a result of the unexcused absences, and in consideration of the school board's policy that grades would be reduced by one letter grade per class per unexcused absence, Knight's grades were lowered. Appealing the trial court's judgment for the school board, Knight alleged that the consequences imposed by the school board deprived him of substantive due process of law and of the equal protection of the law, in violation of both the state and federal constitutions. Distinguishing this case from *Goss v. Lopez*,[4] the Appellate Court of Illinois observed that Knight was not denied the right to an education, but only the receipt of grades. The court acknowledged some similarity between the effects of unwarranted derogatory information about a student, the condition condemned in *Goss*, and the receipt of lowered grades. However, the

1. Valentine v. Independent School District, 183 N.W. 434 (Iowa 1921).
2. *Id.* at 436.
3. 348 N.E.2d 299 (Ill. App. Ct. 1976).
4. 95 S. Ct. 729 (1975).

court explained, "We are most reluctant to intervene in the grading process. Where a grade is dispensed by a teacher within that teacher's subjective discretion, we can see no justification for court intervention."[5]

The only case in this group that has reached a federal appellate court is the Fifth Circuit's decision in *Raymon v. Alvord Independent School District*[6] in 1981. Roberta Raymon, a high school student in Texas, was penalized for an unexcused absence from class by the deduction of three points from her six-week algebra grade. This altered her grade point average from 95.478 to 95.413, but it did not change her class standing, and she remained second in her class. Arguing that the penalty was arbitrarily imposed in violation of the fifth and fourteenth amendments, her parents sued for damages and injunctive relief under 42 U.S.C. § 1983. The federal district court, without deciding the federal constitutional claim, exercised jurisdiction over the pendent state claims and ordered the three points restored to Roberta's algebra grade. Attorney's fees were denied, and Roberta appealed that part of the decision.

With a few blunt words, the Fifth Circuit Court of Appeals reversed and ordered the district court to dismiss the complaint, stating: "A complaint that alleges the existence of a frivolous or insubstantial federal question is not sufficient to establish jurisdiction in a federal court. Ms. Raymon's claim ... is patently insubstantial."[7]

A teacher's rule that participation in a Christmas program was a requirement for the completion of a course was tested in a Missouri court in 1983.[8] The teacher announced on the first day of the term that no one in band or chorus would be excused from participation unless a request was made to the teacher before the program. Johnson, a senior, attended band and chorus regularly until the day before the performance when he left with his family to visit relatives in Hawaii, on a trip that was planned the previous summer. Because of his unexcused absence, Johnson received an "F" grade for the second half-semester in band and chorus.

The trial court and the Missouri Court of Appeals upheld the teacher's policy. Both courts found that there was sufficient evidence to support a conclusion that the student was fully aware of the consequences of his unexcused absence and that he willfully neglected to inform the teacher of his planned absence.

The New Milford, Connecticut attendance policy provides two

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5. 348 N.E.2d 299 (Ill. App. Ct. 1976) *quoting* Goss v. Lopez, 95 S. Ct. at 735.
6. 639 F.2d 257 (5th Cir. 1981).
7. *Id.* at 258.
8. Johnson v. Shineman, 658 S.W.2d (Mo. Ct. App. 1983).

types of academic sanctions for students who are absent from school. Course credit is withheld from any student who, without receiving an administrative waiver, is absent from any year-long course for any reason for more than twenty-four class periods. In addition, the course grade of any student whose absence from school is unapproved is subject to a five-point reduction for each unapproved absence after the first.

The stated purpose of the attendance policy is educational rather than disciplinary. A student's disciplinary suspension from school, for reasons unrelated to attendance, is considered an approved, rather than an unapproved, absence. A student's absence from school, whether approved or unapproved, is not a ground for suspension or expulsion.

As a result of unapproved absences, Campbell's grades in three classes were lowered from passing to failing. In a fourth course his grade was passing, but he received no credit because of his total of thirty-eight absences.

The trial court and the Supreme Court of Connecticut upheld the school board policy. Both courts rejected Campbell's claim that the policy is violative of state law and the state and federal constitutions. Holding that the school board policy is academic rather than disciplinary, the court cited *Board of Curators of the University of Missouri v. Horowitz*[9] to explain that academic sanctions require far less stringent procedural requirements than disciplinary suspensions or dismissals. Academic evaluations of a student necessarily depend on professional judgments that are more subjective than the typical factual questions presented in disciplinary decisions. Bowing to the expertise of the educators who wrote the policy in question, the court said: "The policy decision that academic credentials should reflect more than the product of quizzes, examinations, papers and classroom participation . . . constitutes an academic judgment about academic requirements. We agree with the defendant's characterization of their policy."[10]

Grade Reduction During Suspensions

Some schools impose grade reductions when students are absent from classes because they have been temporarily suspended from the school. This policy has survived legal challenge three times in the past decade. In *Fisher v. Buckburnett*,[11] a student sought relief from

9. 98 S. Ct. 948 (1978).
10. Campbell v. Board of Educ. of New Milford, 475 A.2d 289, 294 (Conn. 1984).
11. 419 F. Supp. 1200 (N.D. Tex. 1976).

suspension and resultant loss of a trimester's credit for violation of a school drug rule. The student claimed that she was denied due process when the board acted under its policy of mandatory suspension. She alleged that even though a hearing was provided, by following its policy of mandatory suspension, the hearing was merely a formalistic ritual. The court disagreed. The court observed that the student was fully heard by the board on why she believed the policy should not apply. The court found nothing in the due process clause to prohibit the board from presuming that the lengthy suspension was the correct punishment for breaches of school discipline.

An Illinois appellate court approved a grade reduction policy in *Donaldson v. Board of Education for Danville School District*.[12] The student was suspended for three days for fighting on school grounds. Since his absence from classes was regarded as unexcused, he was not allowed to make up the six-week finals and course work that he missed, which resulted in his receiving lower midterm grades. The court held that the school board had not abused its discretion, even though the suspension occurred during an examination period, because the punishment of a three-day suspension was neither harsh nor excessive. There was some indication in the opinion that if the student had missed "final examinations," there would have been such a substantial effect on his ultimate course grade as to make the decision to suspend him during that time arbitrary.

A Texas court recently upheld a school board policy that attaches an academic penalty to school suspensions. In *New Braunfels Independent School District v. Armke*,[13] two high school seniors were suspended for three days for consuming an alcoholic drink on a school-sponsored trip. In addition to the suspension, the school imposed an academic penalty that resulted in each student receiving grades of zero on all graded classwork for each day of the suspension. The students argued that the board had not adopted a policy to permit this form of "double punishment." The court found that a statement in the student handbook, which expressly provided for the suspensions and grade reductions, was sufficient to place the students on notice of the punishment.

Cases in Which the Student Prevailed

In the past decade, student plaintiffs have prevailed in five challenges of school board policies that assign academic penalties for non-academic conduct. They succeeded in three truancy and two suspension cases.

12. 424 N.E.2d 737 (Ill. App. Ct. 1981).
13. 658 S.W.2d 330 (Tex. Civ. App. 1983).

Grade Reduction for Truancy

The first student victory occurred in the Supreme Court of Kentucky in 1975.[14] The school board had included in the students' handbook a regulation concerning unexcused absences that classified absences resulting from suspensions as unexcused absences. Tommy Bale had been suspended from school on two separate occasions for possession and consumption of alcoholic beverages on school grounds. The unexcused absence rule was invoked for the second offense, when Tommy was suspended for four days. The result was that his semester grades were reduced in three of his five courses.

Tommy challenged the school board's authority to invoke the unexcused absence regulation. Refusing to follow the board's argument that the statutes gave it this authority, the court found that these statutes were directed to regulations for the conduct of students. The statutes, however, clearly preempted:

> the right of school officials to promulgate disciplinary regulations that impose additional punishment for the conduct that results in suspensions. If the conduct of the student in the judgment of the board warrants invoking the statutory authority to suspend, and school authorities do suspend, they have the right to determine the duration of suspension so that such action constitutes a complete punishment for the offense.[15]

A slightly different issue was examined in *Hamer v. Board of Education.*[16] A high school student left school without proper permission and received a three-percent reduction in the total grade of each class missed. The student challenged the punishment on the grounds that there was no express school board policy authorizing the punishment. He argued that the school board improperly delegated its rule-making authority to the principal of the school.

The Appellate Court of Illinois agreed with the substance of the holding in *Knight,*[17] but concluded that the student was entitled to be heard on the question of whether the grade reduction for unauthorized absence was approved policy of the board.

In another truancy case, Wendy Blackman was absent from the Onteona, New York High School at least twenty-five days and she skipped her social studies class an additional twenty-three days. School officials suspended Wendy from her social studies class and

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14. Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975).
15. *Id.* at 525.
16. 382 N.E.2d 231 (Ill. App. Ct. 1978).
17. Knight v. Board of Educ., 348 N.E.2d 299 (Ill. App. Ct. 1976).

refused to allow her to take the final examination in that class. Wendy's parents sued for a recision of the officials' actions.

After stating that "Wendy is and was a truant," the court ruled in her favor.[18] Referring to the compulsory attendance statute in New York, the court found that the school officials could have arrested Wendy and placed her in attendance. Instead, the officials' actions were based on a rule that was unauthorized by New York law.

Grade Reduction During Suspensions

In a Colorado case, Artie Gutierrez was denied academic credit for the fall semester of the 1977-78 school year because of his failure to fulfill attendance requirements. He challenged the school officials' action in state court. The district's attendance policy provided that a student would be denied academic credit for all classes in which more than seven absences occur in a semester. The seven allowable days of absence were to accommodate personal illness, professional appointments, serious personal or family problems, or any other reason.

The trial court and the Colorado Court of Appeals held that the district's attendance policy was invalid because it was inconsistent with the state compulsory attendance law.[19] The appellate court explained that Colorado law requires students to attend school for at least 172 days during the school year. Days on which a student is "temporarily ill or injured" or "has been suspended or expelled" are, however, counted as part of the 172 mandatory attendance days. The court held: "The denial of academic credit to the [student] based on this policy was in excess of the school district's authority."[20]

In the last and most recent of the reported cases, Debbie, an eleventh grade student at Cumberland Valley, Pennsylvania High School, was suspended for five days because she drank a glass of wine while on a class field trip to New York City. In accordance with the district's disciplinary policy, her grades in each subject were reduced by ten points — two percentage points for each day of suspension.

The Commonwealth Court of Pennsylvania agreed with the trial court that this grade reduction was improper.[21] After noting that the case is one of first impression in Pennsylvania, the court said it "must decide the legality of a Board policy, not specifically authorized or proscribed by statute or regulation, which authorized penalties, affecting and reducing educational standing, for infractions that

18. Blackman v. Brown, 419 N.Y.S.2d 796 (N.Y. App. Div. 1978).
19. Gutierrez v. School Dist. R-1, 585 P.2d 935 (Colo. Ct. App. 1978).
20. *Id.* at 937.
21. Katzman v. Cumberland Valley School District, 479 A.2d 671 (Pa. Commw. 1984).

are not education related." While noting that the board has authority to adopt reasonable rules and regulations regarding the conduct and deportment of students, the court determined that this does not include authority to assess penalties that downgrade achievement for reasons that are irrelevant to the achievement being graded. It is improper and illegal to misrepresent achievement in this manner. The court did note in a parenthetical comment that it would accept the board's policy of grade reduction if it were limited to academic cheating, explaining that "cheating is related to grading."

Conclusions

So where are we? Case law on the question of academic penalties for student misconduct is anything but settled. In the past decade, the misbehaving students won five and lost seven of the legal encounters examined in this paper. In challenges of school board policies that assess academic penalties for truancy, students won in three and lost in four cases. In challenges of policies that include grade reduction with suspensions, students won in two and lost in three cases.

None of these court opinions is controlling. Only two state supreme courts have ruled on the question (Kentucky in 1975 in *Dorsey* and Connecticut in 1984 in *Campbell).* Two federal district courts have examined the question in *Fisher* and *Raymon* and have reached different conclusions. The only United States court of appeals *(Raymon)* to rule on the use of academic penalties for student misconduct reversed the trial court and ordered it to dismiss the complaint for lack of a federal question.

Given this hodgepodge of court opinions, conclusions are neither numerous nor of great value. Nevertheless a few observations are warranted.

1. Although not directly addressed in this discussion, it is clear from dicta in numerous opinions that courts are loathe to intrude in matters that are purely academic. Academic decisions are fairly sacrosanct and will be scrutinized only when they are challenged as arbitrary, malicious, in bad faith, or as implicating other constitutional rights.

2. When academic sanctions are used as a disciplinary response they are subject to legal challenge as ultra vires (beyond or without proper authority), or as violative of substantive or procedural due process.

3. Most courts require a rational connection (nexus) between the academic sanction and the conduct of the student. Some courts are quite lenient in finding this critical link. This point is best illustrated

in cases involving school attendance and academic grades. In four of the seven cases in this group *(Knight, Raymon, Johnson,* and *Campbell),* the board of education prevailed. These courts assumed a rational relationship between class attendance and student achievement. In the three cases where the students prevailed on this issue, the courts failed to discover this connection, holding instead that the lowering of grades of truants is outside the rule-making authority of the board. *(Hamer, Blackman,* and *Gutierrez)*

4. School rules that impose academic sanctions for student misconduct are most likely to be upheld if they incorporate the guidelines outlined below.

A. Explicit policies should be adopted by the board and made known to the students. The students in *Hamer* and *New Braunfels* maintained that there was no school board policy that applied to their situation. The *Hamer* court announced that, although it was inclined to follow *Knight* in upholding the school board, it was remanding the case for a hearing on the question of relevant school board policies. The *New Braunfels* court found that a statement in the student handbook, which expressly provided for suspension and grade reduction, was sufficient to place the students on notice.

B. There should be a provision in the policy that permits students to take final examinations. This provision reduces the harshness of the penalty, especially for seniors in high school whose continued education and employment opportunities may be adversely affected if they are not given an opportunity to take final exams.

C. Academic penalties for student misconduct should be limited to those serious offenses that also result in suspension from school. The absence from school because of the suspension creates the essential nexus between the grade reduction and the misconduct. Although not all courts will uphold a school policy that results in a "double punishment," several have been willing to do so. Several attorney general opinions also advise against grade reduction for student misconduct unless the conduct is serious enough to warrant a simultaneous suspension from school.[22] To illustrate, a demerit system that reduces a student's grades for drinking may be unreasonable and violative of substantive due process unless a period of suspension is attached to the penalty.

D. School policies should meet minimum standards of due process. The offending students should be notified of the charges against them, informed of the nature of the evidence, and given an opportu-

22. *See* 74 Op. Cal. Att'y Gen. 145 (1975); Op. Ky. Att'y Gen. 59 (1973); and Op. Mo. Att'y Gen. 178 (1973).

nity to respond — all before any determination of their punishment. The *Shineman* and *Armke* opinions make it clear that due process is required.